

## **§ 920.112**

house, or retail stand (roadside stand, flea market or any other outlet approved by the committee) which is operated by said handler, or (iii) at a Certified Farmers Market.

[50 FR 4856, Feb. 4, 1985, as amended at 53 FR 34035, Sept. 2, 1988]

### **§ 920.112 Late payments.**

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit shall be deemed late if not received within 30 days of invoice, or such other later time period as specified by the committee. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

[62 FR 45295, Aug. 27, 1997]

### **§ 920.122 Nomination procedures.**

(a) The manner of nominating grower members and alternate members to the committee shall be as follows:

(1) The committee's mailing of an approved nomination form to all kiwifruit growers of record shall constitute notice of nominations. All eligible kiwifruit growers may nominate themselves or any other eligible kiwifruit grower to vacant committee positions for the nominee's district. Completed nomination forms shall be returned to the office of the committee by a date specified by the committee and approved by an agent of the Secretary. Nomination forms shall provide for names of nominees, as well as the nominating grower's name, address, telephone number, and signature. Incomplete nomination forms will not be considered valid.

(2) For each district involved in the current year's nominations, committee staff, with the Secretary's oversight, shall establish a slate of candidates with the names of all qualified nominees received. Persons submitting invalid nomination forms shall be notified of such by the committee. Within a reasonable time period, a ballot containing a slate of candidates shall be mailed to all growers of record within the respective district represented by such candidates. The committee shall provide a reasonable period of time to

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growers to cast votes on the candidates and return the completed ballots for tallying.

(3) To be eligible to vote, growers must be producing kiwifruit during the crop year nominations are held and within the district represented by the candidates on the ballot. A grower may only vote for candidates from one district and may only cast one ballot. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. Each ballot shall provide for a voter eligibility certification which must include the voter's name, address, telephone number, and signature, as well as the name(s) of all handlers which handled the current season's crop. At the discretion of the Secretary, the ballots may include other background information about each candidate.

(4) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and are to be returned to the Secretary's agent who will tally the ballots with such assistance from the committee as may be requested by the agent. Such ballots shall be postmarked by a date specified by the committee and approved by an agent of the Secretary.

(5) The names of the persons receiving the highest total number of votes for a particular position shall be submitted to the Secretary as the nominees for such positions. In the event of a tie vote, a ballot containing only the names of the candidates receiving the tied vote shall be mailed to all growers in the affected district.

(b) In the event of a vacancy as specified in § 920.26, the committee shall utilize the same procedure as prescribed in § 920.122(a)(1) through (a)(5) to fill such vacancy.

[57 FR 62160, Dec. 30, 1992]

### **§ 920.160 Reports.**

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, except as provided in paragraph (e) of this section, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other

later time established by the committee; *Provided*, That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year. The first report shall be due no later than January 5 and the final report no later than the fifth day of the following month after such shipment is completed for the season, or such other later times established by the committee. Such report shall show:

- (1) The reporting period;
- (2) The name and other identification of the shipper;
- (3) The number of containers by type and weight by shipment destination category;

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections "KISS/Add Inventory," "KISS/Deduct Inventory," and "KISS/Shipment," on or before November 5th, or such other later time as the committee may establish. Subsequent KISS forms, including all three sections, shall be filed with the committee by the fifth day and again by the twentieth day of each calendar month, or such other later time as the committee may establish, and will contain the following information:

- (1) The beginning inventory of the handler by size and container type;
- (2) The quantity of fruit the handler lost in repack and repacked into other container types;
- (3) The total domestic and export shipments of the handler by size and container type; and
- (4) Any other adjustments which increase or decrease posted handler inventory.

(c) *Handler report of returned fruit*. After fruit is returned to a grower, each handler shall file with the committee, no later than five days from the date the fruit is returned, or such other time as the committee may establish, a Return Receipt of Kiwifruit to Grower Form.

(d) *KISS Price/Shipment report*. Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5:00 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping week is defined as Sunday through Saturday. The report shall show:

- (1) The company name, contact person, and phone number of the handler;
- (2) Weekly period covered by the report;
- (3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and
- (4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

(f) Each handler shall file annually with the Committee an End-of-Season F.O.B. Sales Report, due within 30 days after such handler has completed current season shipments, reporting gross f.o.b. sales value and number of containers by pack style and size for fresh market shipments for the season. The report shall also show the company name, contact person, and phone number of the handler.

(g) Each handler shall file annually with the Committee a Final Packout Report, due within 30 days after such handler has completed current season shipments, reporting total containers shipped, by pack style for fresh market shipments, for each grower entity during the season. The report shall also include the grower entity and farm name, mailing address, the county in which the farm is located, and total

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acreage for each reported grower entity. Also, the report shall show the company name, contact person, and phone number of the handler.

[50 FR 4856, Feb. 4, 1985, as amended at 52 FR 37130, Oct. 5, 1987; 59 FR 53565, Oct. 25, 1994; 61 FR 51576, Oct. 3, 1996; 67 FR 54332, Aug. 22, 2002; 74 FR 46309, Sept. 9, 2009; 76 FR 80211, Dec. 23, 2011]

### § 920.213 Assessment rate.

On and after August 1, 2013, an assessment rate of \$0.025 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

[78 FR 62961, Oct. 23, 2013]

### § 920.302 Grade, size, pack, and container regulations.

(a) No handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

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(1) *Grade requirements.* Fresh shipments of kiwifruit shall be at least KAC No. 1 quality.

(2) *Size Requirements.* Such kiwifruit shall be at least a minimum Size 45. Size 45 is defined as a maximum of 55 pieces of fruit in an 8-pound sample.

(3) *Maturity requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.

(4) *Pack Requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) (A) Kiwifruit packed in any container shall be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

SIZE DESIGNATION AND SIZE VARIATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8-pound sample	Column 3 size variation tolerance (diameter)
18 or larger .....	25	1/2-inch (12.7 mm).
20 .....	27	1/2-inch (12.7 mm).
23 .....	30	1/2-inch (12.7 mm).
25 .....	32	1/2-inch (12.7 mm).
27/28 .....	35	1/2-inch (12.7 mm).
30 .....	39	1/2-inch (12.7 mm).
33 .....	43	3/8-inch (9.5 mm).
36 .....	46	3/8-inch (9.5 mm).
39 .....	49	3/8-inch (9.5 mm).
42 .....	53	3/8-inch (9.5 mm).
45 or smaller .....	55	1/4-inch (6.4 mm).

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such con-

tainers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be “not badly misshapen,” and an additional tolerance of 16 percent is provided for kiwifruit that is “badly misshapen,” and except that all varieties of kiwifruit are exempt from the “tightly packed” standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms